
SEED PRODUCER PROTECTION STUDY

Report to the Washington State Legislature
as required by the 2003 Legislature, SHB 1100

Prepared by
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Table of Contents

Executive Summary.....	5
History.....	9
Recommendations.....	11
Appendices.....	13

APPENDIX A – SEED STUDY ADVISORY GROUP MEMBERS

APPENDIX B – JUNE 26, 2003, MINUTES FROM SEED STUDY ADVISORY GROUP MEETING,
MOSES LAKE, WA

APPENDIX C – SEPTEMBER 25, 2003, MINUTES FROM SEED STUDY ADVISORY GROUP MEETING,
MOSES LAKE, WA

APPENDIX D - OCTOBER 10, 2003, MINUTES FROM SEED STUDY ADVISORY GROUP MEETING –
PRODUCERS, WARDEN, WA

APPENDIX E – OCTOBER 30, 2003, MINUTES FROM WESTERN WASHINGTON SEED INDUSTRY
PUBLIC MEETING, MOUNT VERNON, WA

APPENDIX F - INDEMNITY FUND CONSIDERATIONS PRESENTATION

APPENDIX G – STATE OF IDAHO SEED INDEMNITY FUND PRESENTATIONS

APPENDIX H - WSDA PRESENTATION TO WESTERN WASHINGTON SEED INDUSTRY

Acknowledgements

The Washington State Department of Agriculture (WSDA) would like to thank the Commission Merchants Advisory Group, Alfalfa Seed Growers Association, Crop Improvement Association, Pacific Northwest Grain & Feed Association, Pacific Northwest Oilseeds Association, Puget Sound Seed Growers Association, Washington-North Idaho Seed Association, Northwest Turfgrass Association, Alfalfa Seed Commission, Turfgrass Seed Commission, and seed dealers and producers who attended the meetings and participated in the discussions.

Executive Summary

In the 2003 legislative session, HB 1100 directed the Washington State Department of Agriculture (WSDA) to conduct a study of alternative methods of reducing the risk of nonpayment of producers from seed company bankruptcies and increasing the financial recovery for seed producers should such bankruptcies occur. This report is the results of that study. Specifically, HB 1100, Section 11 states:

“ In recognition of the significant losses incurred by seed producers in the state from a recent seed company bankruptcy and the increasing diversity of and changes in the state's seed industry, the department of agriculture shall conduct a study of alternative methods of reducing the risk of nonpayment of producers from seed company bankruptcies and increasing the financial recovery for seed producers should such bankruptcies occur. The study shall evaluate alternative methods of addressing issues relating to nonpayment of producers, including the potential of establishing an indemnity fund, and how the costs of providing and maintaining such a fund would be borne. The department shall evaluate whether establishing an indemnity fund would be in addition to or as a substitute for any current bonding requirements for various types of seed crops and seed contracts, including bailment contracts. The department shall establish an advisory committee including representatives of producers and seed companies of various types of agricultural seeds grown in this state to assist it in the study. The department shall report the results of the study, including any recommended legislation in bill form, to the governor and to the appropriate committees of the legislature by December 1, 2003.”

ADVISORY GROUP

The agency solicited for and selected volunteers for the study from the following groups: Commission Merchants Advisory Group, Alfalfa Seed Growers Association, Crop Improvement Association, Pacific Northwest Grain & Feed Association, Pacific Northwest Oilseeds Association, Washington-North Idaho Seed Association, Puget Sound Seed Growers Association, Northwest Turfgrass Association, Alfalfa Seed Commission, Turfgrass Seed Commission, licensed and unlicensed seed commission merchants and dealers, and seed producers. Members of the group were selected from a list of those that volunteered. The agency allowed the group members to send a substitute to each of the meetings and allowed others who attended the meetings to participate in the discussions.

Although an attempt was made, the agency was not successful in recruiting members for the advisory group from western Washington. Consequently the advisory group was made up entirely of dealers and producers from eastern Washington. Because of the lack of balance, a separate public meeting was held in the western Washington town of Mount Vernon on October 30, 2003 to brief stakeholders in the area on the proceedings and to listen to their concerns and suggestions.

MEETINGS AND DISCUSSION

Prior to the advisory group meetings, agency staff, and a senate staff member visited a seed producer and dealer's operation in Connell, Washington for purposes of gaining a better understanding of the seed industry.

The first meeting of the Seed Advisory Group was held on June 26, 2003 in Moses Lake, Washington. The group reviewed current business practices within the seed industry, risks in the industry, liens, bankruptcy, the Grain Warehouse Program, the Seed Program, and the Commission Merchants Program. There was discussion about how disputes regarding technical issues such as clean out rates get settled. The group concluded that these disputes would have to be settled by mediation. The producers present said they would like a system that gave them a level of confidence in those they were doing business with. They would like to know that the contracts are sound; that the company is financially stable; and that there is some reasonable formula for bonding.

The second meeting of the Seed Advisory Group was held on September 25, 2003 in Moses Lake, Washington. This group was made up of seed dealers and processors. Although invited, no producers were in attendance. We began with an overview of the basic elements of indemnity funds. The presentation covered topics such as funding, claims, administration, and oversight. Russ Dapsauski, Idaho State Department of Agriculture's manager of the Warehouse Control Program, presented an overview of Idaho's Seed Indemnity Fund. He explained the covered agricultural products, collection of money to build the fund, and the claims process. Finally, we discussed the current bonding requirements of RCW 20.01. After a roundtable discussion, the group reached a consensus favoring licensing and bonding under the current provisions in the Commission Merchants law. However, the dealers present at the meeting agreed that they would be receptive to an indemnity fund if the producers were willing to pay for the fund. Because producers were not represented, a separate meeting with the producers was scheduled.

The meeting with the producers was held on October 10, 2003 in Warden, Washington. After reviewing the discussion from the previous meeting, the growers stated they preferred licensing and bonding to a seed indemnity fund. They thought the grower community was not ready for an indemnity fund at this time. We also discussed changing the definition of seed to include any seed covered by the Seed Act (RCW 15.49), so that the coverage is more inclusive and more specific. The producers expressed concern about the bonding formula for proprietary seed under RCW 20.01.210(2). They would like to see the law changed so the formula is the same for all seed transactions. The change would make for a single formula, simplify the law, and provide a higher measure of protection.

A final public meeting was held on October 30, 2003 in Mount Vernon, Washington to inform the seed industry members in western Washington of the study and possible recommendations. WSDA presented an overview of the legislation, the Commission Merchants law, and discussed the content of the meetings held in eastern Washington. This group stated that they were in favor of the current licensing and bonding requirements. They voiced concerns about the lien laws in the state saying that they would like to see producers have a first priority in the lien process. One suggestion was that growers should have first priority on liens filed against unlicensed dealers and that they might approach legislators from their area to sponsor a bill to that affect in the 2004 legislative session.

RECOMMENDATIONS

Based on the four meetings with seed dealers, processors, and producers from around the state, WSDA recommends the following:

1. Maintain the basic licensing and bonding requirements under the current version of the Commission Merchants Act.
2. The definition of “seed” would be changed to include any product that is labeled as seed under Washington’s seed labeling act.
3. Simplify the bonding formula so that proprietary seed is covered at the same level as non-patented or public domain seed.

Suggested language incorporating these recommendations will be submitted to the legislature upon request and/or presentation of this report in December 2003.

History

The Commission Merchants Program protects agricultural producers against theft, fraud, and unfair business practices by licensing persons and businesses involved in buying and selling agricultural products. Licensees who purchase by check or on credit or who handle agricultural products on consignment must be bonded. The program investigates producer complaints against commission merchants and cooperates with federal, state, and local law enforcement agencies. The program is entirely funded by license fees.

The Commission Merchants law was enacted in 1925, revised in 1991, and again in 2003. Since the act was last revised in 1991, the value and dollar volume of agricultural products handled by licensees has significantly increased. During the 2003 Legislative session, WSDA proposed several changes to the Commission Merchants Act (RCW 20.01) in HB 1100. Most of the changes, mainly affecting hay and straw dealers, were accepted and enacted into law.

Among the changes was a proposal to clarify that seed crops are to be licensed and bonded under the Commission Merchants Act as a Dealer, Commission Merchant, or Broker. The agency requested the change because a major bankruptcy and an appellate court case highlighted the need to clarify the law reaffirming that all seed dealers be under the same licensing and bonding requirements of RCW 20.01, as all other agricultural dealers. The license fee is \$357.00 and the minimum bond costs is estimated at \$150.00 or 1% of total bond amount.

During the legislative session, the Washington-North Idaho Seed Association testified against this aspect of the agency's proposal and suggested an indemnity fund as an alternative to bonding as a method of producer protection. In the final bill language the proposal clarifying that seed dealers were covered under the Commission Merchants Act was deleted and WSDA was directed to conduct a study.

In 1981, a Washington Appellate Court in the case of Heart Seed Company, Inc v. Arthur W. Chamnes ruled that holding a license as a seed dealer under RCW 15.49, The Seed Act, precluded a company from having to obtain an agricultural dealer license under RCW 20.01. The Seed Act deals primarily with seed quality requirements and does not afford producers any protection from unscrupulous business practices or business failures that the Commission Merchants Act does. Due to this ruling, there was confusion whether seed dealers are currently exempt from licensing under the Commission Merchants Act if they are licensed under RCW 15.49. Out of the 56 seed dealers in the state, 24 are voluntarily licensed under RCW 20.01 and 32 are licensed only under RCW 15.49. Subsequent legislation affecting the act addressed other seed related issues, such a bailment contracts, again including seed dealers in the act. Many of the voluntary licensees signed up under the Commission Merchants Act after a major seed company went bankrupt and the growers, who lost a significant amount of money, refused to work with seed dealers who were not licensed and bonded.

This study requested that WSDA research alternative methods of addressing issues relating to nonpayment of producers, beyond licensing and bonding under the Commission Merchants Act, including the potential of establishing an indemnity fund and how it would be financed.

Recommendations

Based on the four meetings with seed dealers, processors, and producers from around the state, WSDA recommends the following:

1. Maintain the basic licensing and bonding requirements under the current version of the Commission Merchants Act. The Advisory Group, those present at the Mount Vernon public meeting and the Seed Program Advisory Group were in agreement on this provision.
2. The definition of “seed” would be changed to include any product that is labeled as seed under Washington’s seed labeling act. Both the Advisory Group, and those present at the Mount Vernon public meeting, were in favor of the change. This model is also used by the state of Idaho for their Seed Indemnity Fund.
3. The producers made the recommendation to simplify the bonding formula so that proprietary seed is covered at the same level as non-patented or public domain seed. There was no disagreement among the Advisory group, or at the Mount Vernon meeting.

Suggested language incorporating these recommendations will be available to the legislature upon request and/or presentation of this report in December 2003.

Appendices

Appendix A – Seed Study Advisory Group Members

Appendix B – June 26, 2003, Minutes from Seed Study Advisory Group Meeting Moses Lake, WA

Appendix C – September 25, 2003, Minutes from Seed Study Advisory Group Meeting Moses Lake, WA

Appendix D - October 10, 2003, Minutes from Seed Study Advisory Group Meeting – Producers, Warden, WA

Appendix E – October 30, 2003, Minutes from Western Washington Seed Industry Public Meeting in Mount Vernon, WA

Appendix F – Indemnity Fund Considerations Presentation

Appendix G – State of Idaho Seed Indemnity Fund Presentations

Appendix G – WSDA Presentation to Seed Study Groups

Appendix H – WSDA Presentation to Western Washington Seed Industry